IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4811 OF 2007

1. Santosh G. Patne, age 42, Occ. Business,
resident of Post Khed, Shivaji Chowk,
Tal. Khed, Dist. Ratnagiri.

2 . Mrs. Pragati B. Kanade, age 44,
Occ. Business, Res. Matoshri Kirana,
Shivaji Nagar, at Post and Tal. Khed,
Dist. Ratnagiri.

3. Shekhar R. Redij, age 45, Occ. Business,
resident of F/5, Plaza Markhandi, at Post
Tal. Chiplun , Dist. Ratnagiri.

4. Vidyadhar R. Pawaskar, age 44, Occ. Business,
resident at Post Harkul Bdk.,
Tal. Kankavali, Dist. Sindudurga.

5. Jalamsingh S. Purohit, age 40, Occ. Business,
Shri Renuka Sweet Marg,
Bazarphet, Kudal, Tal. Kudal,
Dist. Sindudurga.

6. Ramesh Raghunath Redij, age 68
99-D Central Co-op. Housing Society,
Salaiwada, Tal. Sawantwadi,
Dist. Sindudurg. .... Petitioners.

vs.

1. M/s. Konkan Railway Corporation Ltd.,
through the Managing Director, having his
office at Belapur Bhavan, Sector, 11,
CBD Belapur – 400 614.
Konkan Railway Corporation Ltd.,
Dist. Ratnagiri.

3. L.K. Varma, Senior Railway Traffic Manager,
R.N., MIDC, Mighol, Ratnagiri.

4. Union of India, through the Ministry of
Railways, Rail Bhavan, New Delhi. .... Respondents.

Mr. Y.S. Jahagirdar, Sr. Adv. I/by Mr. S.P. Kanuga
for Petitioners.
Ms. Kiran Bagalia i/by Ms. Asha Bhombwani
for Respondent Nos. 1 to 3.

CORAM : J.N. PATEL AND

A.A. SAYED, JJ.

DATE : 27TH AUGUST, 2007.

ORAL JUDGMENT (Per J.N. Patel, J.) :

Heard the learned counsel for the parties.

2. The Regional Railway Manager of Konkan Railway Corporation Limited , District Ratnagiri invited tenders on 30th April 2007 for allotment of tea stalls and STD/PCO booths at various stations in Ratnagiri region of Konkan Railway. The respondent Konkan Railway has formulated a policy which came into force on 26th January 2007 in respect of grant of commercial contracts over Konkan Railway. As per the policy all commercial contracts i.e. static and mobile units come under the purview of the catering policy and it was decided that the commercial contracts on Konkan Railway would be awarded through open tender based on two-bid system i.e. technical and financial bid OR direct bidding, except for Halt agency, TBA an in-train vending for holiday specials and commercial establishments under reserved category. The commercial contract policy covers various aspects. One of the aspects of the policy which is relevant for deciding the issue in this petition is serial no. (f) which relates to the eligibility criteria where it has been decided that a three fold eligibility criteria including land losers, existing contractors and experienced contractors has been provided in detail. The policy also provides for reservation in allotment of commercial units and

while allotting minor catering units and STD booths at stations on Konkan Railway, reservations to SC/ST/OBC/minorities, etc., have been kept and it operates according to the category of station for which contracts are to be given.

3. In so far as category (f) is concerned, it relates to the eligibility criteria. The allotment of all commercial contracts is to be made by inviting applications through press notification except otherwise specified, from the eligible parties on the following criteria:

Group	List of Contracts	Priority
1	1)House-Keeping contracts 2)In-train vending contract 3)TBA agency 4) AVMs 5) Contracts at class "A" Stations * All general Minor Catering Contracts. * All minor non-catering units excluding book-stall, Hal agents and STD booths. * Veg-N/Veg restaurant	1) Land Loser with relevant Experience and the **"existing contractor** on successful completion of six years tenure. 2) Land-losers in partnership/society with an experience contractor. 3) Contractor with experience with approval of MD.

Group	List of Contracts	Priority
2	1) Contracts at B, D and E stations * All general minor catering contract. * All minor non-catering units except book-stall & STD booths * Veg-N/Veg restaurants.	1) Land loser and **"existing contractor"** on successful completion of six years 2) Land losers in partnership/society. 3) Other than land-losers with approval of MD.
3	Book Stalls.	1) Land loser s with capability to run the contract and *existing book stall contractors. 2) Co-operative society, association, partnership, partnership unemployed graduate, National Book trust.
4	STD Booths (open category)	1) Land loser and *existing contractor. 2) Open to all category.
5	AVMs, ATMs, Personal weighing machines, Maintenance of Rest Room for Passengers Assistance, Advertisement Interior & Exterior of trains, Weigh bridge for Trucks	No priority and No reservation.

4. It is the case of the Petitioners that the Respondent No. 2 invited tenders on 30th April, 2007 for allotment of tea stalls and STD/PCO booths at various stations over Ratnagiri Region of Konkan Railway. The tender document contains the terms and conditions and further lays down the scope of the contract as well as mode of finalisation of the contract. It was provided that the tenderer should offer two packets consisting of a technical bid, that is to say, Packet-A and financial bid, that is to say, Packet-B. Both the bids have to be separately sealed in envelope-A and envelope-B and it should be tendered in the sealed master envelope. The requirements of envelope A which is the technical bid was that it should contain basic document laid down in the terms and conditions of the tender which, inter alia, included name of the applicant, priority code, details of experience, form of organisation, financial status, income-tax assessment order for the last three years, earnest money deposit and its details, bank solvency certificate, educational proof, caste certificate in case of SC, ST, OBC, certificate of disability, details of Permanent Account Number and in case of the applicants falling in land loser category certain documents in support of the same were required to be furnished. The tender notice contained clear

instructions that if the tender submitted by the tenderer was not accompanied by all or any of the documents mentioned above, the tender will be outrightly rejected. In so far as the envelope B i.e. the financial bid is concerned, it was only to quote the bid and no other documents were required to be enclosed in the financial bid. Selection procedure was that the technical bid of priority-1 will be opened first. After technical scrutiny, financial bid of those found suitable would be opened. If there are no applications under priority-1 and nobody is found suitable after technical evaluation, bids received under priority-2 would be considered for technical evaluation. If no application is received under priority nos. 1 and 2 or nobody qualifies after technical evaluation, the applications received under priority-3 would be considered. The last date for collection of the tenders or downloading of the tenders was 31st May, 2007 till 16.00 hrs. The tenders were required to reach the office of the respondents on or before 1st June, 2007 till 16.00 hrs. The tender form laid down the time schedule for submission of tenders, opening of technical bid, opening of financial bid and thereafter personal interviews. The tender document also provided that the Corporation reserves the right to reject or accept application without any

reason and no correspondence will be entertained in this behalf.

5. It is the case of the Petitioners that they filed their tenders for stalls i.e. Petitioner No. 1 for Khed Railway Station, Petitioner No. 2 for Chiplun Railway Station, Petitioner No. 3 for Ratnagiri Railway Station, Petitioner No. 4 for Kankavali Railway Station, Petitioner No. 5 for Kudal Railway Station and Petitioner No. 6 for Sawantwadi Railway Station.

6. According to the Petitioners, on 1st June, 2007, a Committee nominated opened the tenders in front of the tenderers in the Conference Hall of Respondent No. 2. The Committee took tender by tender and paginated the tender and accompanied documents and initialed the same in the presence of the tenderer. Thereafter the tenders were entered in the register maintained by the respondents and signatures of the tenderer were obtained on the register. Thereafter the Committee scrutinised the tenders so received with reference to the terms and conditions laid down in the notice inviting tenders and called all the tenderers on 15th June, 2007 at the premises of respondent no. 2. In the presence of the tenderers the Committee announced

the qualified persons whose financial bids could be opened thereafter. The list of finalised tenderers was signed by the Senior Regional Traffic Manager and put up on the notice board. The Petitioners were present at the said meeting and were informed that the financial bids would be opened after about 16.00 hrs. after having put up the list of the qualified persons on the notice board of the respondents. It is the case of the Petitioners that in the list so published , the Petitioner Nos. 1, 3, 5 and 6 alone qualified and whose bids could be opened and if the bids were above the reserve price fixed by the respondents could be awarded contract for tea stalls at the Railway Stations at Khed, Ratnagiri, Kudal and Sawantwadi respectively. As regards the Petitioner Nos. 2 and 4 there were other bids from one more person and in such a case after opening of the financial bid packet, the successful bidder who has given higher offer would be awarded the contract. It is submitted that in respect of STD/PCO booths, there were no tenders and therefore none qualified. It is the case of the Petitioners that the Petitioners assembled at the due time in the office of the Respondent No. 2 for opening of the financial bids, declaration of allotment of contract and award of the contract. The Respondent No. 3 announced that the tenders called for allotment of tea

stalls and STD/PCO booths have been cancelled and that fresh tenders would be invited in due course which has been communicated by putting up a notice dated 15th June, 2007. It is the said notice of cancellation of tenders, which is the subject matter of challenge in this petition. The notice reads as under :-

"KONKAN RAILAY CORPORATION LTD.,

Date : 15-06-2007.

NOTICE

It has been decided by competent authority that, the tenders called for allotment of tea stall & STD/PCO booth has been cancelled.

The case will be retendered in due course and necessary advertised. Tender will be called through vide publicity as was done in earlier case.

Sd/-
(L.K. Varma)
Sr. RTM/RN"

According to the Petitioners, the respondents have cancelled the tenders on account of political pressure brought by the unsuccessful tenderer who have taken law into their hands and pressurised the Committee to cancel the tenders as their bids were found not meeting with the terms and conditions of the tender and, therefore, according to the Petitioners the decision of the respondents cancelling and rejecting the tenders received is arbitrary and is capricious and violates the doctrine of legitimate expectation which has seriously prejudiced the petitioners in as much as the petitioners had participated in the tender process, incurred expenses and the petitioners tenders were bound to be considered unless the justification for cancellation was based on cogent and valid reasons warranted by the facts subsequently noticed or found.

7. It is the case of the Petitioners that the process of advertising the tender widely and receiving the applications numbering about 40 itself

suggests that the steps taken in calling for the tenders were fair and just. Therefore, the Petitioners submit that there exists no valid ground or cogent reason entitling the respondents to cancel the tender in the manner in which they have done and, therefore, the Petitioners are challenging the impugned decision of the respondents cancelling the tender on the ground of malafides and arbitrary exercise of power having cancelled the process of tender after opening the technical bid packets and determination of the eligibility as per criteria laid down and that therefore they seek an appropriate writ, order or direction from this Court to order the respondents to award the contract to the qualified persons mentioned in the list at Exhibit "C" to the petition by opening the financial bid packets and the successful tenderer should be awarded the contract in respect of the Railway Stations mentioned in Exhibit "C" against their names.

8. In response to the notice issued to the respondents, affidavit in reply has been filed by the Senior Regional Traffic Manager of Konkan Railway Corporation Ltd. The fact of floating the tender and inviting the bids are not disputed. It is also not disputed that the respondent took a

decision to cancel the tender but it is contended that the Petitioners do not have the right to challenge the right of the respondents to cancel the tender in as much as the Petitioners can take part in the fresh bid and that no prejudice is caused to the Petitioners. It is submitted on behalf of the respondents that the tender came to be cancelled before the process was completed for justifiable reasons which cannot be questioned by the Petitioners as no right accrued in favour of the Petitioners until a contract is executed in as much as issuance of tender is only an invitation to act and that the Respondent No. 1 has reserved its right in the tender document itself to reject the tender.

9. The respondents have tried to justify their decision on the ground that this decision is taken to ensure that all the desiring persons have an equal opportunity of entering into such contracts. It is their case that the subject matter was relating to nine tenders for tea stalls at Veer, Karanjadi, Khed, Anjani, Chiplun, Ratnagiri, Kankavali, Kudal and Savantwadi and four tenders for STD/PCO booths at the Railway Stations at Khed, Chiplun, Ratnagiri and Kudal. According to them, the tenders were issued so as to synchronize with the expiration of the tenure of ongoing contracts in both the

categories. As per the policy, the land losers who have lost their lands to Konkan Railway Project are one among the top priority categories. It is being stated that in all the respondent no. 1 received 40 applications for both Tea-stalls and S.T.D. Booths and the screening of the applications was done by the Screening Committee in the meeting held on 14/6/2007. As many as 30 applications came to be rejected as the applicants have not filled up the necessary particulars. The technical bids were opened in the presence of all the applicants. The rejection of the 30 bids caused tremendous unrest amongst about 100 people who had gathered for the opening of the bids. It became apparent that the local people were seriously handicapped because the tenders' conditions were in English. Many local people are not well conversant with English and found it difficult to fill up the tenders properly in all respects. On the other hand, the Petitioners are all existing contractors who are well versed in the bidding process. It was felt that the local people were handicapped in filling up the technical bid and most of the applications were rejected because the applications were incomplete. The Scrutiny Committee reported this matter to the Managing Director of the Respondent No. 1. The matter was discussed and in order to ensure maximum

participation in the biding process and equal opportunity to the local residents and especially the land losers, the respondent no. 1 took the decision to re-issue the tenders. The respondent No. 1 also decided to offer help and assistance in filing up the tenders and, therefore, the decision to re-issue tenders is done in public interest and is also in consonance with the policy to afford opportunity to all those who wish to participate.

10. In reply to the contention of the respondents that the local people were handicapped as the tender conditions were in English it has been stated by the Petitioners that the tenders always have been in English language as any resident in any part of India can apply and English is widely spoken. It is further contended that the tender was not restricted to local area and that the stand taken by the respondents that the tender process was cancelled as the local people did not understand English but the re-tender process which has now been adopted, the language remains English thereby showing that the purported cancellation is in fact frivolous and malafide. It is also contended that the tender terms and conditions for allotment of commercial contracts clearly provide, "Applications received without the requisite

enclosures and Earnest Money Deposit will be rejected." and, therefore, according to the Petitioners as most of the applications were rejected on the ground that they being incomplete and not accompanied by essential documents, it is not open to the Respondents to play favourite and purport to cancel the entire tender which it does not have the power to do. It is further contended that though there was a month's time to respond to the tender, no complaint from any local resident is alleged to have been received during the period and, therefore, the reason put forth for cancellation of the tender smacks of malafides. It is contended that the process of issuing tender has received wide spread publicity and every person had an opportunity to participate and in the reply filed by the respondents they have specifically accepted that most of the applications were rejected because the applications were incomplete and that as a matter of fact many tenders were rejected because the earnest money pay orders were not furnished or solvency certificates were not furnished or character certificate was not furnished and, therefore, the justification put forth by the Petitioners cannot be accepted.

11. Mr. Jahagirdar, the learned Senior Advocate, appearing for the

Petitioners submitted that though there is no doubt that the respondents reserved the right to cancel the tender it could not have done so without assigning any reason. On the other hand, what now stands revealed is that the decision has been taken for extraneous consideration and this is nothing but arbitrary exercise of the discretion vested in the Respondent No. 1 authority, which is a wholly owned subsidiary of the Ministry of Railways. In support of his contention Mr. Jahagirdar has placed reliance on the decision tendered by the Supreme Court in the case of **Ramchandra Murarilal Bhattad and Ors. vs. State of Maharashtra & Ors.,** reported in (2007) 2 SCC 588. Mr. Jahagirdar pointed out to the Court that in the affidavit in Sur-rejoinder the case put up before the Court is that when the technical bids were opened and the list of those who had completed the Technical Bids in accordance with the instructions was published, to the naked eye it became evident that out of only 10 applications which were properly submitted, 9 belonged to the existing contractors and only one was that of a local resident. The local residents were agitated and formed an impression that they would not have a chance to compete with the existing contractors. According to Mr. Jahagirdar such an impression cannot tilt the

discretion in favour of the cancellation of the tender process. It is further submitted that the respondents have taken a stand that this was for the first time that tender process was initiated for allotment of Tea Stalls and S.T.D. Booths on Konkan Railway Stations and high percentage of local residents in Konkan region are poor and illiterate and they are not well-versed with the commercial processes and the implications and lacunae in filling up the Tender Applications. As against this, the existing contractors are well-versed in filling up tenders and, therefore, it was apparent that the local residents including land losers were handicapped due to their ignorance. Out of 40 tender applications, which were received, as many as 30 were incomplete and, therefore, in order to give full effect to the policy of Konkan Railway Corporation Ltd., a decision was taken to provide fresh opportunity to the local residents to re-submit the tenders. It is, therefore, submitted that this by itself cannot be a justifiable reason to cancel tender process. Further, it is contended that the tender process came to be cancelled in midway due to political pressures as there was an agitation led by Youth Congress and National Congress Party leaders which clearly indicates that the tender process was cancelled due to political pressure. It is, therefore, submitted

that the award of contract is alleged to be influenced by bringing political pressure which would send a wrong signal to the society as one cannot say that in future fanatics of the political parties who are not successful in getting the contracts, will not bring political pressure. Such a modus operandi would be again adopted and it would make a mockery of the whole tender process and, therefore, intervention of this court is required to quash and set aside the impugned decision.

12. Per contra, Mrs. Kokil, the learned counsel appearing for the Respondents, submitted that the respondents have exercised their discretion of the cancellation of the tender process which was just and fair in the facts and circumstances as placed on record. It is submitted that as observed in the decision cited by her rendered by the Supreme Court, in the case of **Rajasthan Housing Board and Another vs. G.S. Investments and Another**, reported in (2007) 1 SCC 477**,** this Court has a very limited jurisdiction in writ petition filed under Article 226 of the Constitution of India where the challenge is to a cancellation of the auction held by the Petitioner and, therefore, this decision does not require any interference by

this Court. It is specifically argued that this being essentially a commercial transaction the respondent can choose its own method to arrive at its decision. It is free to cancel the tender process and that the Court should always keep the larger interest in mind in order to decide whether its interference is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere. According to her, this is not a fit case where the Court ought to have interfered in the matter. It is submitted that as the financial bid was not opened, the petitioners are in no way prejudiced or can make a grievance in the matter. It is submitted that the language of the tender remains English, extensive information in Marathi (local language) on the requirements and protocol for submitting the tender applications has been published in all prominent local newspapers. The desiring applicants can also avail of on the spot assistance in submitting the tender applications. The officers of the Respondent No. 1 have also spoken to the respective bank officers to read the tender document and assist the applicants in producing the proper solvency certificates and, therefore, the Petitioners should consider the decision to discharge the earlier tender was correctly taken considering the

hardships faced by the applicants most of whom were the local persons whose lands have been acquired for the project. It is submitted that the recommendation to discharge the tender was approved by the Regional Railway Manager who is the head of the regional office and this was also taken by the Managing Director upon exhaustive discussions with the convener of the Tender Committee as well as with the local leaders who pointed out the difficulties faced by the local residents in filling up the tender applications and that the decision has been taken in public interest which does not call for any interference. Ms. Kokil submitted that she has no quarrel over the principles under which the High Court can interfere with the decision making process in the matter of contractual matters and has also placed reliance on the judgment rendered by the Supreme court in the case of **Union of India and others vs. Dinesh Engineering Corporation and Another,** reported in (2001) 8 SCC 491 in which it was held that the power to reject any tender offer without assigning any reasons or to accept or not to accept the lowest offer – when it is expressly provided in the guidelines and was also published in the notice inviting tenders, entitles the respondents to cancel the tender process and this decision being taken after the tender

process was reviewed by the authorities and it was found that for want of proper knowledge and for want of guidelines out of 40 participants 30 of them were disqualified for non-compliance of the requirement of technical bids is in itself a justification and, therefore, as a matter of policy the respondents decided to cancel the tender and, therefore no malafides can be attributed to the respondents and no interference is called for.

13. Taking into consideration the peculiar facts of the case, we propose to consider the case on two counts. Firstly, as to whether the reasons for which the respondents exercised their discretion to cancel the contract is just and fair and in larger public interest and secondly, whether the decision taken by the respondents is within the four corners of law and not which no sensible person could have reasonably arrived at and whether it is a bona fide one.

14. In the case of **Monarch Infrastructure Private Limited Vs. The State of West Bengal & Ors**., Reported in (2000) 5 SCC 287 the Supreme Court has held as under :-

"Judicial decisions in the matters of tender process and award of contract show that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. The legal position can be summed up as thus :

(i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest.

(ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate.

(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons."

'Broadly stated, the courts would not interfere with the matter of administrative action or changes made

> therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide."

In the present case there is no quarrel over the issue that the discretion to discharge/ cancel the tender process was left to the respondent no. 2. The only thing which is required to be examined by us is whether in the facts and circumstances the discretion exercised by the respondents was arbitrary or unreasonable or that such rejection was in public interest for valid and good reasons.

15. The discretion, in general is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution, nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glasses and pretences, and not to

do according to the will and private affections of persons. The very word discretion standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore discretion cannot be arbitrary but must be a result of judicial thinking. The word discretion in itself implies vigilant circumspection and care; therefore where the legislature concedes wide discretion it also imposes a heavy responsibility. It is now well settled law that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls under any of the categories has to be established. Mere assertion in that regard would not be sufficient. The famous case commonly known as "The Wednesbury's case is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory discretion. A passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd., v. Wednesbury Corpn. Reads as follows :-

" .... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word unreasonableness in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said, and often is said, to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority.... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one

another."

"..... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. **It is not what the court considers unreasonable**. .... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."

(emphasis supplied)

"72. Therefore, to arrive at a decision on reasonableness the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to

the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view."

16. Having set out the parameters, let us examine the factual matrix on the basis of which the decision to discharge/cancel the tender came to be taken by the respondents. The reason put forth by the respondents in taking the impugned decision is that in response to the notice inviting tenders, in all 40 applicants applied but only 10 qualified and out of them only one was a local resident. On the basis of this, the authorities drew an inference that as this was the first occasion to invite tenders and the notice inviting tenders was published in English, in all probability as most of the local residents in Konkan region are poor and illiterate, they are not well versed with the commercial process and the implications and the lacunae in filling up the tender applications. As against this the existing contractors are well versed in filling up tenders, and, therefore, as the local residents including the land losers were handicapped due to their ignorance, they deserve to be given an opportunity to participate in the tender process and, therefore, the tender process was cancelled on the recommendation of the Committee which was

approved by the Regional Railway Manager of which decision was taken at the level of Managing Director.

17. The contention of Mr. Jahagirdar, the learned Senior Advocate appearing for the Petitioners, that none of the local residents or for that matter no person has made any grievance that they are not in a position to understand the tender process and, therefore, are not able to participate in the same or those who participated have not been able to meet the technical requirement, itself belies the justification.

18. We are conscious of the fact that in writ jurisdiction and particularly when we are having a judicial review the Court has its own limitation and it cannot sit in appeal over the decision of the respondents.

19. It is true that there has been an agitation in the matter and Youth Leaders from Youth Congress and N.C.P., have led the delegation. This, by itself, is not sufficient to hold that the decision to discharge/cancel the tender process was made under political influence / pressure. What we find is that

the respondents having taken a decision to discharge / cancel the tender process before opening the financial bid i.e. envelope B for the reason stated by them in reply to the contention of the Petitioners, the same cannot be said to be malafide particularly when there is no material on record to indicate that the respondents have acted dishonestly in order to favour a particular class of persons or deprive the petitioners. On the other hand the decision to discharge / cancel the tender process has been taken to give fair opportunity to local residents who miserably failed to respond to the notice inviting tender and, therefore, it can be said that the impugned decision was taken in larger public interest.

20. The decision to discharge or cancel the tender process might have caused some inconvenience to the Petitioners but then no prejudice is caused to them as it was open for them to participate in the fresh tender process which is in vogue and the Petitioners have also participated in the same. Further, as the financial bid earlier invited and tendered by the Respondents not having been opened, no question arises relating to any personal or public interest being adversely affected so as to call for any interference by this

Court. Therefore, the petition is dismissed. No order as to costs. Rule is discharged.

(J.N. Patel, J.)

(A.A. Sayed, J.)